



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: July 17, 2018  
MAHS Docket No.: 18-001103  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR  
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was scheduled for July 11, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Clarice Bridges, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUES**

The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

**FINDINGS OF FACT**

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent received ongoing FAP benefits from September 2014 through March 2015. (Exhibit A, p. 52)

2. A pamphlet sent to clients who apply for FAP benefits stated to not sell or trade FAP benefits. The pamphlet further warns that breaking FAP rules could result in disqualification and/or repayment of FAP benefits which are improperly traded or sold. (Exhibit A, pp. 58-73)
3. From January 2013 through March 2015, EBT transactions at [REDACTED] Michigan (hereinafter "Store") averaged \$7.23. From November 2014 through March 2015, Respondent's EBT average transactions ranged from \$11.62 to \$14.78. (Exhibit A, p. 49)
4. From November 2015 through February 2017, Respondent made approximately 21 EBT purchases from Store totaling \$[REDACTED]. Respondent's transactions at Store alleged by MDHHS to involve trafficking include the following:

September 13, 2014	\$ [REDACTED]	
October 15, 2014	\$ [REDACTED]	
October 19, 2014	\$ [REDACTED]	
November 13, 2014	\$ [REDACTED]	
November 13, 2014	\$ [REDACTED]	
November 14, 2014	\$ [REDACTED]	
February 20, 2015	\$ [REDACTED]	(Exhibit A, pp. 50-51)
5. On an unspecified date, the Food and Nutrition Service (FNS) performed an on-site investigation of Store. Investigative findings included the following: Store had no shopping carts; Store had no shopping baskets; Store did not use optical scanners at checkout; and Store had no private storage area for food. Store was 1,100 square feet. (Exhibit A, pp. 9-43)
6. On April 22, 2015, FNS sent Store correspondence informing Store that its EBT transactions from December 2014 through February 2015 demonstrated "clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm". Evidence cited by FNS against Store included an unusually high number of transactions ending in a same-cents value, multiple transactions from individual EBT accounts within unusually short timeframes, transactions occurring within unusually short timeframes, and excessively large EBT transactions. A list of suspected trafficking transactions at Store was referenced but not presented. (Exhibit A, pp. 44-46)
7. On June 1, 2015, following receipt of correspondence from Store, FNS informed Store that it was "permanently disqualified" from accepting EBT transactions. (Exhibit A, pp. 47-48)
8. On February 6, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV resulting in a one-year disqualification by trafficking FAP benefits at Store. MDHHS also requested a hearing to establish that Respondent

received an overissuance of \$ [REDACTED] in FAP benefits allegedly trafficked from September 2014 through February 2015. (Exhibit A, p. 1)

9. Respondent had no known disability or impairment to understand her responsibilities. (Exhibit A, p. 53)

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish that Respondent committed an IPV. MDHHS' Hearing Summary and an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 4-5) alleged that Respondent trafficked \$ [REDACTED] in FAP benefits at Store from September 2014 through February 2015.

MDHHS may request a hearing to establish an intentional program violation, a disqualification, or a debt. BAM 600 (January 2018), p. 5. An IPV is suspected for a client who is alleged to have trafficked FAP benefits. BAM 720 (October 2017), p. 1. MDHHS defines trafficking as the "buying, selling or stealing or otherwise effecting an exchange of FAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." BAM 700 (January 2018), p. 2.

MDHHS suspects an IPV "when there is **clear and convincing** [emphasis added] evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility." *Id.*, p. 8. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS alleged that Respondent trafficked FAP benefits by exchanging FAP benefits for cash and/or items not authorized to be purchased with an EBT card. The simplified argument against Respondent is as follows:

- Store was administratively established to have engaged in FAP trafficking based on various EBT transactions which were consistent with trafficking.
- Store has a limited supply of food where it is unlikely that someone would make regular and/or large purchases of food.

- Over a period of time, Respondent had transactions at Store which were consistent with trafficking.
- Therefore, Respondent trafficked FAP benefits.

MDHHS presented various documents from FNS' investigation of Store concerning trafficking. FNS' investigation included photographs of Store, an inventory of Store's EBT-eligible items, and correspondence sent by FNS to Store informing Store that it was permanently disqualified from receiving EBT transactions. The documents verified that the outcome of FNS' investigation was that Store was permanently disqualified from accepting EBT transactions due to transactions consistent with FAP trafficking. MDHHS alleged that Respondent's transaction history was also consistent with trafficking.

FNS cited transactions at Store which were "excessively large" as support that Store was involved in trafficking. Presented evidence did not establish what transaction amount qualified as excessively large. Respondent had two transactions at Store for \$90-\$100 amounts. The transaction amounts may be large for Store; but given the evidence, it is debatable if they are "excessively" large. When factoring Respondent's other transactions at Store, a non-trafficking explanation is less likely.

FNS cited transactions at Store ending in same-cents value as support for finding that Store was involved in trafficking. From September 2014 through February 2015, 13 of Respondent's 21 transactions at Store ended in even-dollar amounts (see Exhibit A, pp. 50-51). Though MDHHS only alleged 5 to involve trafficking, Respondent's pattern of even-dollar transactions at Store was consistent with trafficking.

Based on the evidence, it is found that Respondent clearly and convincingly trafficked \$ [REDACTED] in FAP benefits at Store. Thus, it is found that Respondent committed an IPV.

The standard [IPV] disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV ... one year for the first IPV ... two years for the second IPV [, and] lifetime for the third IPV. *Id.*

MDHHS acknowledged that Respondent had no previous IPV disqualifications. Thus, an IPV disqualification period of one year is justified. MDHHS also alleged that Respondent's trafficking of FAP benefits justifies finding an OI of FAP benefits.

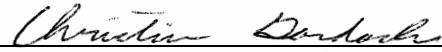
When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. BAM 700 (January 2016), pp. 1-2.

It was already found that Respondent trafficked \$ [REDACTED] in FAP benefits. Thus, MDHHS established that Respondent is responsible for an OI of \$ [REDACTED]

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on FAP benefit trafficking from September 2014 through February 2015. It is further found that MDHHS established an OI of \$ [REDACTED] against Respondent. The MDHHS requests to establish an overissuance and a one-year disqualification against Respondent are **APPROVED**.

CG/

  
\_\_\_\_\_  
**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Lauren Casper  
MDHHS-Macomb-20-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
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M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS